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SEP 3 0 2008

OFFICE OF PETITIONS

In re Patent No. 7,381,729	:	
Pahl et al.	:	DECISION ON REQUEST
Issue Date: June 3, 2008	:	FOR
Application No. 10/828,650	:	RECONSIDERATION OF
Filed: April 21, 2004	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 04266864	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE DECEMBER 7, 2007 APPLICATION FOR PATENT TERM ADJUSTMENT," filed June 25, 2008. Patentee requests that the patent term adjustment indicated on the face of the patent be corrected from five hundred thirty-four (534) days to six hundred thirty-four (634) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On June 3, 2008, the above-identified application matured into U.S. Patent No. 7,381,729, with a Patent Term Adjustment of 534 days. Prior to issuance of the patent, on December 7, 2007, patentee timely filed an application for patent term adjustment requesting that an additional 100 days of patent term be granted for the Office taking in excess of three years to issue the patent. By decision mailed March 31, 2008, patentee was advised that a decision on this issue was to be held in abeyance until after the actual patent date and upon filing of a request by patentee. Pursuant to that decision, patentee timely filed the

instant request. Patentee continues to request correction of the patent term adjustment to increase the patent term adjustment to 634 days on the basis that the patent issued more than 3 years and 100 days after the date on which the application was filed, and a request for continued examination (RCE) was filed in this application three years and 100 days after the date on which the application was filed.

Pursuant to 35 U.S.C. 154(B)(i), § 1.703(b)(1) provides, in pertinent part that:

the period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) ... and ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

Thus, the filing of a request for continued examination (RCE) cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment.

In this instance, a RCE was filed on July 30, 2007. Thus, the ability to accumulate additional patent term adjustment against the three-year pendency provision ended July 30, 2007. Accordingly, the period of adjustment under § 1.702(b) is 99 days, counting the number of days beginning on April 22, 2007, and ending on July 29, 2007 (July 30, 2007 to June 3, 2008 is 310 days).

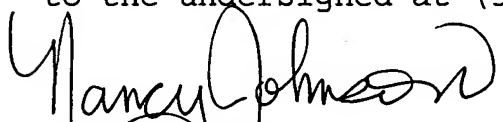
However, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the

period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, the period of delay of 99 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 477 days attributable to grounds specified in § 1.702(a)(1) and 57 days attributable to grounds specified in § 1.702(a)(4). Thus, no additional period of adjustment beyond the 534 (477 + 57) days was entered.

In view thereof, the patent term adjustment of 534 days indicated in the patent is correct

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) on application for patent term adjustment filed December 7, 2007. No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions